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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/444,120	11/19/1999	YOSHIHIKO SHIODA	019441.023	8235
21878	7590	06/17/2004	EXAMINER	
KENNEDY COVINGTON LOBDELL & HICKMAN, LLP			GORDON, RAEANN	
214 N. TRYON STREET			ART UNIT	PAPER NUMBER
HEARST TOWER, 47TH FLOOR				
CHARLOTTE, NC 28202			3711	

DATE MAILED: 06/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/444,120	SHIODA, YOSHIHIKO	
	Examiner	Art Unit	
	Raeann Gorden	3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 15 March 2004.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1,3,4,6-24,27 and 28 is/are pending in the application.

4a) Of the above claim(s) 3,4,6,11-17,24,27 and 28 is/are withdrawn from consideration.

5) Claim(s) 7-10,21 and 22 is/are allowed.

6) Claim(s) 1,18-20 and 23 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 23 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Davis (3,168,312). Davis discloses a frame comprising a base, a vertical stand, a horizontal arm attached to the stand, a flexible cord attached to the horizontal arm, and a ball attached to the flexible cord adjacent the ground (see fig 1). Davis further discloses the device utilized for balls of differing weights and densities and may be struck with various types of striking implements (col. 2, lines 1-5). Davis gives examples of softballs and baseballs as the type of larger ball that can be accommodated by the device (col. 1, lines 65-70).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 18, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis in view of Baldorossi et al (4,026,561). Regarding claims 1 and 18, Davis discloses a frame comprising a base, a vertical stand, a horizontal arm attached to the stand, a flexible cord attached to the horizontal arm, and a ball attached to the flexible cord adjacent the ground (see fig 1). Davis further discloses the device utilized for balls of differing weights and densities and may be struck with various types of striking implements, including golf clubs (col. 2, lines 1-5). Davis gives examples of softballs and baseballs as the type of larger ball that can be accommodated by the device (col. 1, lines 65-70). Applicant claims a device comprising a golf club and an object at least the size of a softball while Davis discloses golf clubs, bats and golf balls, footballs, baseballs. Davis does not disclose explicitly disclose the combination of the golf club and an object at least the size of a softball. However, Baldorossi teaches the use of a golf club and a ball at least the size of a softball. One of ordinary skill in the art would modify Davis with Baldorossi to utilize a restricted swing (abstract). Regarding claims 19 and 20, Davis discloses the invention as shown above but fails to include the height of the frame. However, Davis discloses the device may be used for a variety of sports (col 2, lines 30-32). Davis gives examples of using softballs and baseballs. It is obvious the height of the frame would fall between 1 ½ and 5 feet to accommodate the heights associated with sports such as softball and baseball.

Allowable Subject Matter

Claims 7-10, 21, and 22 are allowed.

Response to Arguments

Applicant argues the method of using the device is different from the method disclosed by Davis. For example, applicant states "while the Davis patent discloses that the retrieving device can be used with various types of ball, it discloses that the ball is selected to practice the sport for which the ball is intended, i.e. a baseball for practicing baseball, a golf ball for practicing golf, a tennis ball for practicing tennis. It does not teach or disclose utilizing a ball of a weight and size for one sport being used to practice another sport." The Examiner agrees with applicant's statement in regards to the prior art. However, applicant is not entitled to a patent for an apparatus with identical structural features as the prior art with a different method of use. The method of using an apparatus is not a patentable distinction when an apparatus is the claimed invention. As shown above, the apparatus as claimed by applicant is identical to the apparatus disclosed by Davis. While the methods of using the apparatus may be different the structural features are the same.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raeann Gorden whose telephone number is 703-308-8354. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 703-308-1513. The fax phone numbers

for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.



Raeann Gorden
Primary Examiner
AU 3711

rg
June 14, 2004